IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 896 OF 2004

Master Devang Yogesh Kanakia
& Ors. ..Appellants

versus

H. P. Modi & Co. & Ors. ..Respondents

Mr. S. Gole for the Appellants.
Mr. Walawalkar with F. J. Takkar for the Respondents No.
Mr. P. Shinde with Mr. P. Shah i/b. M. Dhruva & Co. for Respondent No. 7.

CORAM : D. G. DESHPANDE,J.

DATE : 17TH OCTOBER,2005

P.C. :

1. Heard learned counsel for the parties.

2. This appeal is filed by the original Plaintiff. It is against an order in Notice of Motion No. 3236 of 1999 taken out by the defendant No.2. The notice of motion of the defendant No. 2 was dismissed as against the defendant No.2 as she was not partner of the said firm, (she having been retired from the firm on 30.8.1999). The City Civil

Court passed an order on 22.9.1999. Apparently paragraph 4 of the order which was read out to me is confusing. Therefore, defendant No.2 applied to the court again for review of her clarification and then clarification came to be given on 12.10.1999, and the notice of motion which was initially allowed in terms of prayer (a) only was allowed in terms of prayer clauses (b) and (c) i.e. dismissal of the suit against defendant No.2 as she was not partner of the suit firm and deleting her name.

3. From the prayers in the plaint, it is clear that the plaintiff was not clear in making prayers. Mr. Gole states that the plaintiff will not press prayer (a) of the plaint but in any case if according to the plaintiff, the defendant No.2 is liable till the date of her retirement, liberty will have to be given to the plaintiff to amend the plaint extensively and therefore this appeal has to be allowed in limited way.

4. Counsel for the original defendant No.2 contended that if the liberty is given to the plaintiff to apply for amendment, his right to oppose amendment on all grounds should not be effected at all and he should have liberty in that regard. Therefore, considering these submissions, I pass the following order:

ORDER

. The appeal is allowed. Impugned order is set aside. Liberty is given to the plaintiff to amend the plaint, and amongst other things, the plaintiff will be at liberty to claim relief against defendant No.2 till the date of her retirement. If any such an amendment is made or sought to be made, the defendant No.2 will have right to oppose the same on all the grounds available. Appeal disposed of accordingly.

17.10.2005 (D.G. DESHPANDE, J.)